IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

MONDAY, THE 10TH SEPTEMBER 2007 / 19TH BHADRA 1929

Crl.L.P..No. 108 of 2007()

CC.728/1998 of J.M.F.C.-I MUVATUPUZHA

.....

PETITIONER/COMPLAINANT:

JEBY JACOB, AGED 29, S/O. FR. P.C.JACOB,
PULLIKKAKUDIYIL HOUSE, KEERAMPARA P.O.,
KOTHAMANGALAM, ERNAKULAM DISTRICT

BY ADV. SRI.JOBY JACOB PULICKEKUDY
SRI.PAUL MATHEW (PERUMPILLIL)

RESPONDENTS: ACCUSED/STATE:-

---

1. ELDHOSE VARGHESE, NEDILAMATTATHIL HOUSE
MALIPRA P.O., KOTHAMANGALAM.

2. STATE OF KERALA, REPRESENTED BY DIRECTOR
GENERAL OF PROSECUTION, HIGH COURT OF KERALA,
ERNAKULAM.

BY P.P.SRI.THOMAS JOHN AMBOOKKAN FOR R2

THIS CRIMINAL LEAVE PETITION HAVING BEEN FINALLY HEARD ON 10/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. Thankappan, J.

- -

Crl.L.P. No. 108 of 2007

- -

Dated this the 10th day of September, 2007

O R D E R

This is a petition to special leave to appeal filed by the complainant in C.C.No.728/98 on the file of the Court of the Judicial Magistrate of the First Class-I, Muvattupuzha. In the complaint it is stated that the 1st respondent borrowed an amount of Rs.45,000/- from the petitioner and in discharge of the above debt, he issued Ext.P1 cheque to the petitioner and when the cheque was presented for encashment, it was dishonoured for insufficiency of funds. To prove the case against the 1st respondent the complainant himself was examined as PW1 and Exts.P1 to P6 were marked. After closing the evidence on the side of the prosecution, the 1st respondent was questioned under section 313 Cr.P.C. He stated that he borrowed an amount of Rs.5,000/- only from the petitioner and he entrusted Ext.P1 cheque as security. He also stated that even though he re-paid the amount, the cheque was not returned to him and on misusing the above cheque the complaint was filed. He further stated that the complaint was not maintainable as the complaint was filed beyond the statutory period. On the

side of the defence, Ext.D1 was marked. Considering all these aspects and relying on a decision of the Apex Court reported in Uniplas India Ltd. V. Government of NCT of Delhi 2001(3) KLT 45, the trial court found that the petitioner ought to have filed the complaint within the statutory period basing on Ext.D1 notice and hence offence under section 138 of the Negotiable Instruments Act was not established against the 1st respondent. Therefore, the trial court acquitted the 1st respondent. Against the acquittal of the 1st respondent, the special leave to appeal has been filed by the petitioner.

2. This Court gone through the judgment of the trial court. The trial court relied on Ext.D1 notice. As per Ext.D1 notice Ext.P1 cheque was dishonoured on 2-1-1998 and the complainant had already issued the notice on 14-1-1998 and hence he ought to have filed the complaint within the statutory period on the basis of Ext.D1 notice, but he did not file any complaint and the complaint was filed by presenting Ext.P1 cheque once again and sending a second notice on 5-5-1998. The trial court also relied on another decision of the Supreme Court reported in Sadanandan Bhadran V. Madhavan Sunil Kumar 1998(2) KLT 765, in which the Supreme Court held that the period of one month for filing the complaint would be reckoned from the day immediately following the day on which the period of fifteen

days from the date of the receipt of the notice by the drawer. Hence, the trial court found that the complaint was not maintainable.

3. Considering the entire facts and circumstances of the case, this Court is of the view that the impugned judgment requires any interference by this Court. Hence, leave to appeal is rejected.

K. Thankappan,
Judge.

mn.

K.Thankappan,J.

- - - - - - - - - - - - - - - -

Crl.l.P.No. 108/2007

- - - - - - - - - - - - - - - -

ORDER

10-9-2007